

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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| <p>MICHAEL GOLDEMBERG, ANNIE LE, and HOWARD PETLACK, on behalf of themselves and all others similarly situated,</p> <p style="text-align:right">Plaintiffs,</p> <p style="text-align:center">v.</p> <p>JOHNSON & JOHNSON CONSUMER COMPANIES, INC.,</p> <p style="text-align:right">Defendant.</p> | <p>Case No. 7:13-cv-03073-NSR-LMS</p> <p>DECLARATION OF TODD S. GARBER IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION</p> |
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**DECLARATION OF TODD S. GARBER
IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**

I, Todd S. Garber, declare pursuant under penalty of perjury to 28 U.S.C. § 1746 that the foregoing is true and correct:

1. I am a partner in the law firm of Finkelstein, Blankinship, Frei-Pearson & Garber, LLP ("FBFG"), counsel for Plaintiffs in the above-captioned action. I respectfully submit this Declaration in support of Plaintiffs' Motion for Class Certification.

2. Plaintiffs have been actively protecting the interests of the class. Each of the three named Plaintiffs has responded to written discovery requests. They have produced documents relating to the purchases of Defendant's product, and they each sat for lengthy depositions.

3. The "Products" referenced in the class definitions for which Plaintiffs seek certification include:

- (1) Aveeno Active Naturals Daily Moisturizing Lotion, 18 fl oz;
- (2) Aveeno Active Naturals Daily Moisturizing Lotion, 12 fl oz;
- (3) Aveeno Active Naturals Daily Moisturizing Lotion, 8 oz;
- (4) Aveeno Active Naturals Daily Moisturizing Body Wash, 12 fl oz;
- (5) Aveeno Active Naturals Daily Moisturizing Body Wash, 18 fl oz;
- (6) Aveeno Active Naturals Daily Moisturizing Lotion with Broad Spectrum SPF 15, 12 fl oz;
- (7) Aveeno Active Naturals Skin Relief 24hr Moisturizing Lotion, 12 fl oz;
- (8) Aveeno Active Naturals Skin Relief 24hr Moisturizing Lotion, 18 fl oz;
- (9) Aveeno Active Naturals Skin Relief 24hr Moisturizing Lotion, 8 oz;
- (10) Aveeno Active Naturals Skin Relief Healing Ointment, 3 oz;
- (11) Aveeno Active Naturals Skin Relief Overnight Cream, 7.3 oz;
- (12) Aveeno Active Naturals Skin Relief Hand Cream, 3.5 oz;
- (13) Aveeno Active Naturals Skin Relief Moisture Repair Cream, 11 oz;
- (14) Aveeno Active Naturals Skin Relief Body Wash, 18 fl oz;
- (15) Aveeno Active Naturals Skin Relief Body Wash, 12 fl oz;
- (16) Aveeno Active Naturals Skin Relief Shower & Bath Oil, 10 fl oz;
- (17) Aveeno Active Naturals Eczema Therapy Moisturizing Cream, 5 oz;
- (18) Aveeno Active Naturals Eczema Therapy Moisturizing Cream, 7.3 oz;
- (19) Aveeno Active Naturals Eczema Therapy Moisturizing Cream, 12 fl oz;
- (20) Aveeno Active Naturals Positively Nourishing Calming Body Lotion, 7 oz;
- (21) Aveeno Active Naturals Positively Nourishing Comforting Whipped Souffle, 6 oz;
- (22) Aveeno Active Naturals Positively Nourishing Energizing Body Lotion, 7 oz;
- (23) Aveeno Active Naturals Positively Nourishing Hydrating Body Wash, 16 fl oz;
- (24) Aveeno Active Naturals Positively Nourishing Antioxidant Infused Body Wash with White Peach and Ginger, 16 fl oz;
- (25) Aveeno Active Naturals Positively Nourishing Smoothing Body Wash, 16 fl oz;
- (26) Aveeno Active Naturals Positively Nourishing Calming Body Wash, 16 fl oz;
- (27) Aveeno Active Naturals Positively Ageless Firming Body Lotion, 8 oz;
- (28) Aveeno Active Naturals Positively Ageless Skin Strengthening Hand Cream, 2.7 oz;
- (29) Aveeno Active Naturals Stress Relief Moisturizing Lotion, 18 fl oz;
- (30) Aveeno Active Naturals Stress Relief Moisturizing Lotion, 12 fl oz;
- (31) Aveeno Active Naturals Stress Relief Body Wash, 12 fl oz;
- (32) Aveeno Active Naturals Stress Relief Foaming Bath, 10 fl oz;
- (33) Aveeno Active Naturals Creamy Moisturizing Oil, 12 fl oz;
- (34) Aveeno Active Naturals Therapeutic Shave Gel, 7 oz;
- (35) Aveeno Active Naturals Positively Smooth Shave Gel, 7 oz;
- (36) Aveeno Active Naturals 1% Hydrocortisone Anti-Itch Cream, 1 oz;
- (37) Aveeno Active Naturals Anti-Itch Concentrated Lotion, 4 fl oz;
- (38) Aveeno Active Naturals Calamine & Pramoxine HCl Anti-Itch Cream, 1 oz;
- (39) Aveeno Active Naturals Moisturizing Bar, 3.5 oz;
- (40) Aveeno Active Naturals Protect + Hydrate Lotion Sunscreen with Broad Spectrum SPF 30, 3 oz;
- (41) Aveeno Active Naturals Protect + Hydrate Lotion Sunscreen with Broad Spectrum SPF 70, 3 oz;
- (42) Aveeno Active Naturals Hydrosport Wet Skin Spray Sunscreen with Broad Spectrum SPF 30, 5 oz;

- (43) Aveeno Active Naturals Positively Radiant Targeted Tone Corrector, 1.1 fl oz;
- (44) Aveeno Active Naturals Positively Radiant Makeup Removing Wipes, 25 count;
- (45) Aveeno Active Naturals Positively Radiant Daily Moisturizer Broad Spectrum SPF 15, 4 fl oz;
- (46) Aveeno Active Naturals Positively Radiant Daily Moisturizer Broad Spectrum SPF 30, 2.5 fl oz;
- (47) Aveeno Active Naturals Positively Radiant Tinted Moisturizer Broad Spectrum SPF 30, 2.5 fl oz, fair to light;
- (48) Aveeno Active Naturals Positively Radiant Tinted Moisturizer Broad Spectrum SPF 30, 2.5 fl oz, medium;
- (49) Aveeno Active Naturals Positively Radiant Intensive Night Cream, 1.7 oz;
- (50) Aveeno Active Naturals Positively Radiant Skin Brightening Daily Scrub, 5 oz;
- (51) Aveeno Active Naturals Positively Radiant Brightening Cleanser, 6.7 fl oz;
- (52) Aveeno Active Naturals Positively Radiant Daily Cleansing Pads, 28 count;
- (53) Aveeno Active Naturals Ultra-Calming Daily Moisturizer Broad Spectrum SPF 15, 4 fl oz;
- (54) Aveeno Active Naturals Ultra-Calming Foaming Cleanser, 6 fl oz;
- (55) Aveeno Active Naturals Ultra-Calming Makeup Removing Wipes, 25 count;
- (56) Aveeno Active Naturals Clear Complexion BB Cream Broad Spectrum SPF 30, 2.5 fl oz, medium;
- (57) Aveeno Active Naturals Clear Complexion BB Cream Broad Spectrum SPF 30, 2.5 fl oz, fair to light;
- (58) Aveeno Active Naturals Clear Complexion Daily Moisturizer, 4 fl oz;
- (59) Aveeno Active Naturals Clear Complexion Foaming Cleanser, 6 fl oz;
- (60) Aveeno Active Naturals Clear Complexion Daily Cleansing Pads, 28 count;
- (61) Aveeno Active Naturals Clear Complexion Cream Cleanser, 5 oz;
- (62) Aveeno Active Naturals Clear Complexion Cleansing Bar, 3.5 oz;
- (63) Aveeno Active Naturals Positively Ageless Youth Perfecting Moisturizer Broad Spectrum SPF 30, 2.5 fl oz;
- (64) Aveeno Active Naturals Positively Ageless Reconditioning Night Cream, 1.7 fl oz;
- (65) Aveeno Active Naturals Positively Ageless Restructuring Treatment Cream, 1.7 fl oz;
- (66) Aveeno Active Naturals Positively Ageless Lifting & Firming Eye Cream, 0.5 oz;
- (67) Aveeno Active Naturals Positively Ageless Complete Anti-Aging System;
- (68) Aveeno Active Naturals Positively Ageless Resurfacing Scrub, 5 oz;
- (69) Aveeno Active Naturals Positively Ageless Daily Exfoliating Cleanser, 5 fl oz;
- (70) Aveeno Active Naturals Smart Essentials Daily Nourishing Moisturizer Broad Spectrum SPF 30, 2.5 fl oz;
- (71) Aveeno Active Naturals Smart Essentials Nighttime Moisture Infusion, 1.7 oz;
- (72) Aveeno Active Naturals Smart Essentials Daily Detoxifying Scrub, 5 oz;
- (73) Aveeno Active Naturals Protect + Hydrate Lotion Sunscreen with Broad Spectrum SPF 50 for Face, 3 oz;
- (74) Aveeno Active Naturals Nourish+ Moisturize Shampoo, 10.5 fl oz;
- (75) Aveeno Active Naturals Nourish+ Moisturize Conditioner, 10.5 fl oz;
- (76) Aveeno Active Naturals Nourish+ Condition Leave-In Treatment, 5.2 fl oz;
- (77) Aveeno Active Naturals Pure Renewal Shampoo, 10.5 fl oz;
- (78) Aveeno Active Naturals Pure Renewal Conditioner, 10.5 fl oz;
- (79) Aveeno Active Naturals Pure Renewal Dry Shampoo, 4.8 oz;

- (80) Aveeno Active Naturals Nourish+ Dandruff Control Shampoo, 10.5 fl oz;
- (81) Aveeno Active Naturals Nourish+ Dandruff Control Conditioner, 10.5 fl oz;
- (82) Aveeno Active Naturals Nourish+ Shine Shampoo, 10.5 fl oz;
- (83) Aveeno Active Naturals Nourish+ Shine Conditioner, 10.5 fl oz;
- (84) Aveeno Active Naturals Nourish+ Strengthen Shampoo, 10.5 fl oz;
- (85) Aveeno Active Naturals Nourish+ Strengthen Conditioner, 10.5 fl oz;
- (86) Aveeno Active Naturals Nourish+ Volumize Shampoo, 10.5 fl oz;
- (87) Aveeno Active Naturals Nourish+ Volumize Conditioner, 10.5 fl oz;
- (88) Aveeno Active Naturals Men's Face Wash, 5.1 oz;
- (89) Aveeno Active Naturals Men's Shave Gel, 7 oz; and
- (90) Aveeno Active Naturals Men's After Shave Lotion, 3.4 fl oz.

4. The products purchased by Plaintiff Michael Goldemberg include:

- Aveeno Active Naturals Creamy Moisturizing Oil, 12 fl oz;
- Aveeno Active Naturals Therapeutic Shave Gel, 7 fl oz;
- Aveeno Active Naturals Positively Smooth Shave Gel, 7 fl oz;
- Aveeno Active Naturals Positively Nourishing Comforting Whipped Souffle, 6 oz;
- Aveeno Active Naturals Nourish+ Moisturize Shampoo, 10.5 fl oz; and
- Aveeno Active Naturals Nourish+ Moisturize Conditioner, 10.5 fl oz.

5. The products purchased by Plaintiff Annie Le include:

- Aveeno Active Naturals Daily Moisturizing Lotion, 18 fl oz
- Aveeno Active Naturals Daily Moisturizing Lotion with Broad Spectrum SPF 15, 12 fl oz
- Aveeno Active Naturals Skin Relief 24hr Moisturizing Lotion, 12 fl oz
- Aveeno Active Naturals Positively Nourishing Energizing Body Lotion, 7 oz
- Aveeno Active Naturals Positively Ageless Firming Body Lotion, 8 oz
- Aveeno Active Naturals Positively Radiant Makeup Removing Wipes, 25 count
- Aveeno Active Naturals Positively Ageless Youth Perfecting Moisturizer Broad Spectrum SPF 30, 2.5 fl oz
- Aveeno Active Naturals Positively Ageless Lifting & Firming Eye Cream, 0.5 oz
- Aveeno Active Naturals Positively Radiant Daily Moisturizer Broad Spectrum SPF 15, 4 fl oz.
- Aveeno Active Naturals Daily Moisturizing Body Wash, 18 fl oz

6. The products purchased by Plaintiff Howard Petlack include:

- Aveeno Active Naturals Daily Moisturizing Body Wash;
- Aveeno Active Naturals Skin Relief Body Wash;
- Aveeno Active Naturals Therapeutic Shave Gel, 7 oz; and
- Aveeno Active Naturals Moisturizing Bar, 3.5 oz.

7. Attached hereto as Exhibit 1 is a true and correct copy of relevant pages of the “ [REDACTED] ” (Bates Labeled AV_0121114-AV_0121123).

8. Attached hereto as Exhibit 2 is a true and correct copy of Exhibit 7 from the August 20, 2015 Deposition of Holly Means, “ [REDACTED] ” (Bates Labeled AV_0094563-AV_0094575).

9. Attached hereto as Exhibit 3 is a true and correct copy of Expert Report of Jean-Pierre H. Dubé, Sigmund E. Edelstone Professor of Marketing and Director of the Kilts Center for Marketing at The University of Chicago (“Dube Report”).

10. Attached hereto as Exhibit 4 is a true and correct copy of Defendant’s Answer and Affirmative Defenses to the Second Amended Complaint, dated September 18, 2014.

11. Attached hereto as Exhibit 5 is a true and correct copy of relevant portions of the August 26, 2015 Fred Koberna Deposition Transcript.

12. Attached hereto as Exhibit 6 is a true and correct copy of relevant portions of the August 20, 2015 Holly Means Deposition Transcript.

13. Attached hereto as Exhibit 7 is a true and correct copy of Defendant’s Responses and Objections to Plaintiffs’ First Set of Requests for Admission dated August 17, 2015.

14. Attached hereto as Exhibit 8 is a true and correct copy of relevant pages of [REDACTED] (Bates Labeled AV_0026962 & AV_0026972).

15. Attached hereto as Exhibit 9 is a true and correct copy of Exhibit 4, “ [REDACTED] ” from the August 20, 2015 Deposition of Holly Means (Bates Labeled AV_0074573-AV_0074608).

16. Attached hereto as Exhibit 10 is a true and correct copy of Exhibit 18 from the August 26, 2015 Deposition of Fred Koberna, “[REDACTED]

[REDACTED]” (Bates Labeled AV_0137208-AV_137556).

17. Attached hereto as Exhibit 11 is a true and correct copy of [REDACTED]
[REDACTED], dated March 2010 (Bates Labeled AV_0051840-AV_0051853).

18. Attached hereto as Exhibit 12 is a true and correct copy of Exhibit 5 from the August 20, 2015 Deposition of Holly Means, “[REDACTED]

[REDACTED]” (Bates Labeled AV_0043233-AV_0043279).

19. Attached hereto as Exhibit 13 is a true and correct copy of Exhibit 10 from the August 20, 2015 Deposition of Holly Means, [REDACTED]

[REDACTED]” (Bates Labeled AV_0080982-AV_0080995).

20. Attached hereto as Exhibit 14 is a true and correct copy of [REDACTED]
[REDACTED]. (Bates Labeled AV_0000101-AV_0000358).

21. Attached hereto as Exhibit 15 is a true and correct copy of the Declaration of Plaintiff Michael Goldemberg.

22. Attached hereto as Exhibit 16 is a true and correct copy of the Declaration of Plaintiff Annie Le.

23. Attached hereto as Exhibit 17 is a true and correct copy of the Declaration of Plaintiff Howard Petlack.

24. Attached hereto as Exhibit 18 is a true and correct copy of [REDACTED]

[REDACTED]” (Bates Labeled AV_0057112-AV_0057182).

25. FBFG will fairly and adequately represent the interests of all class members. FBFG has a proven track record of zealously and successfully advancing the interests of class members in consumer class actions.

26. FBFG’s attorneys are highly qualified and have extensive experience in complex civil litigation and consumer class actions. We are at the forefront of class action litigation concerning false and misleading labeling cases. A sampling of the Firm’s more significant past and present cases can be found in the Firm’s Resume attached as Exhibit 19.

27. FBFG’s partners have been recognized as “Super Lawyers” and have been selected by their peers as amongst the New York area’s “Best Lawyers.” The firm’s lawyers have been selected for admission to the Top Trial Lawyers in America™ and to the Litigation Counsel of America’s Trial Lawyer Honorary Society, as well as inducted as Fellows in the American Bar Foundation.

28. FBFG is also counsel of record in numerous class actions throughout the country, including cases pending in the United States District Courts for the District of Massachusetts, Northern District of California, Central District of California, Southern, Eastern, and Western Districts of New York, District of New Jersey, District of Connecticut, District of Columbia, District of Nevada, as well as actions pending in the state courts of New York, New Jersey, Florida, and California.

Executed on September 18, 2015 in White Plains, New York.

**FINKELSTEIN, BLANKINSHIP, FREI-PEARSON &
GARBER, LLP**

By: /s/ Todd S. Garber
Todd S. Garber